

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

2012 JAN 23 PM 12:41

U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

TIMOTHY LUSHER,)
Plaintiff.)
v.)
NORFOLK SOUTHERN RAILWAY)
COMPANY,)
Defendant.

2 12 CV 37

COMPLAINT

NOW COMES the Plaintiff, TIMOTHY LUSHER, by and through his attorneys, HOEY AND FARINA, P.C. and GEORGE T. BRUGESS, and for his Complaint against the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, states as follows:

1. This action arises under, and the rights and liabilities of the parties to this cause are governed by, the Federal Employers' Liability Act, 45 U.S.C. sec. 51 et seq.

2. At all times herein, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, was and is a railroad corporation doing business in the State of Indiana.

3. At all times herein, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, was a common carrier by railroad engaged in interstate commerce.

4. On June 3, 2009, and at all pertinent times, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, owned, maintained and operated the Elkhart yard.

5. On June 3, 2009, the Plaintiff was employed by the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, as a conductor.

6. On June 3, 2009, the Plaintiff was ordered to apply the handbrake on a traincar.

7. At the time and place alleged, Plaintiff was applying a handbrake as instructed using a brake stick when he was seriously injured.

8. At the time and place alleged, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, had a nondelegable duty to provide the Plaintiff with a reasonably safe place to work, to provide reasonably safe tools, equipment and workplace and to provide sufficient manpower to safely perform the tasks at hand.

9. In violation of its duties, the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, committed one or more of the following negligent acts or omissions:

- (a) failed to provide the Plaintiff with a safe place to work;
- (b) violated certain safety standards including OSHA regulations, FRA regulations and industry safety standards;
- (c) failed to provide the Plaintiff with safe and suitable equipment and tools;
- (d) violated the Federal Safety Appliance Act; and
- (e) was otherwise careless and negligent.

10. Defendant's failure to provide Plaintiff, TIMOTHY LUSHER, with a safe place to work by one or more of the aforementioned negligent acts or omissions caused, in whole or in part, Plaintiff's injuries.

11. As a consequence, Plaintiff, TIMOTHY LUSHER, incurred injuries which have caused and will continue to cause him great pain, suffering, inconvenience, anguish, and disability; as a further result, Plaintiff, TIMOTHY LUSHER, has been and will in the future be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired; as a further result, Plaintiff, TIMOTHY LUSHER, has incurred medical, hospital, and related expenses and is reasonably certain to incur further medical, hospital, and related expenses in the future.

WHEREFORE, the Plaintiff, TIMOTHY LUSHER, demands judgment in his favor and against Defendant, NORFOLK SOUTHERN RAILWAY COMPANY, in a sum in excess of \$50,000.00 plus the costs of this suit.

Respectfully submitted,
HOEY AND FARINA, P.C.

By: s/George T. Brugess
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